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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF THE  
CARROLL & DUBIES SUPERFUND SITE

Reynolds Metals Company,

Respondent

Proceeding under Section 122(g)(4)  
of the Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980, as amended,  
42 U.S.C. § 9622(g)(4).

ADMINISTRATIVE ORDER  
ON CONSENT

U.S. EPA INDEX NO.  
II-CERCLA-95-0217

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or § 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E (issued Sept. 13, 1987, amended by memoranda dated June 17, 1988 and May 19, 1995).

2. This Consent Order is issued to Reynolds Metals Company ("RMC" or "Respondent") and concerns the contribution of Respondent toward the costs of response actions that have been

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and will be conducted in connection with the Carroll & Dubies Superfund Site (the "Site"), located in the Town of Deerpark, Orange County, New York.

3. Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. This Consent Order was negotiated and executed by EPA and Respondent in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

4. EPA and the Respondent agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in this Consent Order.

## II. PARTIES BOUND

5. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to fully and legally bind the party represented by him or her. Any change in ownership or corporate status of the Respondent, including any transfer of assets or real or personal property, shall in no way alter Respondent's payment responsibilities under this Consent Order.

### III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, including the attached appendices, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Order" shall mean this Administrative Order on Consent and all appendices attached thereto. In the event of a conflict between this Consent Order and any appendix, this Consent Order shall control.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

e. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral or a lower case letter.

f. "Parties" shall mean the United States and Respondent.

g. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA paid at or in connection with the Site through May 17, 1995, plus the interest on those costs which has accrued pursuant to 42 U.S.C. § 9607(a) through the effective date of this Consent Order.

h. "Remedial Design/Remedial Action" or "RD/RA" shall mean the design, implementation and operation and maintenance of the remedy selected by EPA for the first operable unit at the Site.

i. "Respondent" shall mean Reynolds Metals Company.

j. "ROD" or "Record of Decision" shall mean the first operable unit ("OU1") Record of Decision for the Carroll & Dubies Superfund Site, issued by EPA on March 31, 1995 pursuant to the NCP in order to select an OU1 remedial action to be implemented at the Site.

k. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

l. "Site" shall mean the Carroll & Dubies Superfund Site, located in the Town of Deerpark, Orange County, New York, which is depicted generally on the map attached as Appendix 1.

m. "State" shall mean the State of New York.

n. "United States" shall mean the United States of America, its agencies, departments, and instrumentalities.

o. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

#### IV. FINDINGS OF FACT

7. The Site was operated by Carroll & Dubies Sewage Disposal, Inc. ("Carroll & Dubies") as a waste disposal facility from approximately 1970 through 1979, during which time the Site was used for the disposal of septic and municipal sewage sludge and industrial wastes. During Carroll & Dubies' operation of the Site, wastes containing hazardous substances were disposed of into unlined lagoons.

8. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154.

9. Pursuant to a February 8, 1990 Administrative Order on Consent issued by EPA, Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") commenced a Remedial Investigation and Feasibility Study ("RI/FS") at the Site pursuant to the NCP.

10. Kolmar and Wickhen completed a Preliminary Remedial Investigation Report in October 1992 and a Supplemental Remedial

Investigation Report in December 1993. Kolmar and Wickhen completed a Feasibility Study ("FS") Report in July 1994.

11. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 15, 1994.

12. EPA issued its ROD for the Site on March 31, 1995, in which the Agency selected the remedial action to be implemented for the first operable unit at the Site.

13. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of May 17, 1995, EPA had paid approximately \$737,478.99 in Past Response Costs.

14. Information currently known to EPA indicates that RMC arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance(s) owned or possessed by RMC which was disposed of at the Site.

15. In accordance with Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), information currently known to EPA indicates that the amount of hazardous substances contributed to the Site by Respondent does not exceed 1.0% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed by Respondent to the Site do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. Based upon the information known to EPA, the estimated volume of the hazardous substances contributed to the Site by Respondent is

17,935 gallons, which represents approximately 0.32% of the total volume of hazardous substances contributed to the Site.

16. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of remediating contamination at or in connection with the first operable unit at the Site, taking into account possible cost overruns in completing the remedial action selected in the ROD and possible future costs if the first operable unit remedial action selected by EPA proves not to be protective of public health or the environment.

17. The payment to be made by Respondent pursuant to this Consent Order, as reflected in Paragraph 20 hereof, is a minor portion of the Past Response Costs and the OU1 RD/RA costs for the Site. Based on currently available information, EPA estimates that the OU1 RD/RA costs will be \$11,364,800.

#### V. DETERMINATIONS BY EPA

18. Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

a. the Site is a "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

b. Respondent is a "person," as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

c. Respondent is a "potentially responsible party" within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g)(1);

d. there has been an actual or threatened "release" of a hazardous substance from the Site, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

e. prompt settlement with Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

f. Respondent's payment to be made under this Consent Order represents only a minor portion of the response costs at the Site, pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

g. the amount of hazardous substances contributed to the Site by Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by Respondent are minimal in comparison to other hazardous substances at the Site, pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

#### VI. ORDER

19. Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, and intending to be legally bound, EPA and Respondent agree, and EPA hereby orders, as follows:



VII. PAYMENT BY RESPONDENT

20. a. Within thirty (30) days of the effective date of this Consent Order, Respondent shall remit to EPA the amount set forth in Paragraph 20.b., by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Respondent's check shall reference the Site name, the name and address of Respondent, and the EPA Index Number of this Consent Order (II-CERCLA-95-0217), and shall be sent to the following address:

EPA Region II  
Attn: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

b. The amount to be paid by Respondent pursuant to this Consent Order is \$75,094.65.

c. The amount to be paid by Respondent under this Consent Order includes a premium to take into account possible cost overruns in completing the OUI RD/RA and possible future costs if the first operable unit remedial action selected by EPA with respect to the Site proves not to be protective of public health or the environment.

21. Respondent shall simultaneously send copies of its check to:

Douglas Fischer  
Assistant Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, NY 10007-1866

and

Sharon Trocher, Remedial Project Manager  
New York/Caribbean Superfund Branch II  
Emergency and Remedial Response Division  
U. S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, NY 10007-1866

#### VIII. CIVIL PENALTIES

22. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any term or condition of this Consent Order, it shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

#### IX. CERTIFICATION OF RESPONDENT

23. By signing this Consent Order, Respondent certifies to the best of its knowledge and belief, the following:

a. Respondent has provided to EPA all information in its possession, or in the possession of its officers, directors, employees, contractors, agents, or assigns, that relates in any way to the generation, treatment, transportation, storage, or disposal of any Waste Material(s) at or in connection with the Site;

b. Respondent has had the opportunity to review information made available by EPA;

c. the information contained in the documentation identified in Paragraph 23.a. is materially true and correct

with respect to: (i) the amount of Waste Material(s) that Respondent may have transported to, or arranged for the transport for disposal at, the Site; (ii) the chemical nature and constituents of such Waste Material(s); and (iii) the toxic or other hazardous effects of such Waste Material(s); and

d. with respect to the totality of the information provided to EPA by Respondent as described in Paragraph 23.a., in combination with any information provided to Respondent by EPA describing Respondent's alleged involvement related to the Site, Respondent neither possesses nor knows of any other documents or information that would suggest:

i. that the Respondent has shipped a higher volume of Waste Material(s) to the Site than is indicated by this information; or

ii. that Respondent has shipped Waste Material(s) to the Site possessing different chemical natures or constituents or possessing more toxic or other hazardous effects than are indicated by this information.

X. COVENANT NOT TO SUE BY THE UNITED STATES

24. In consideration of the payment that will be made by Respondent pursuant to Section VII of this Consent Order, and except as specifically provided in Paragraphs 25 through 28 of

this Consent Order, the United States covenants not to sue or to take any other civil or administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the OU1 RD/RA at the Site or Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the payment required by Section VII, above. This covenant not to sue is conditioned upon the complete satisfaction by Respondent of its payment obligations under this Consent Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### Reservation of Rights

25. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 24. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters, including the following:

- a. claims based on a failure to make the payment required by Section VII of this Consent Order;
- b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances unrelated to this Site;
- c. liability arising out of future disposal by Respondent of any hazardous substance at the Site;
- d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;

e. liability for response costs that have been or may be incurred by the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, or any other federal trustees for natural resources relating to the Site;

f. criminal liability;

g. liability for additional operable units at the Site; and

h. liability for violations of law other than those that are addressed under this Consent Order.

26. Nothing in this Consent Order constitutes a covenant not to sue or a covenant not to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Respondent, and the covenant not to sue in this Consent Order is null and void, if information unknown to EPA as of the date of the execution of this Consent Order by EPA is discovered that indicates that Respondent no longer qualifies as a de minimis party at the Site because Respondent contributed greater than 1.0% of the hazardous substances at the Site or contributed hazardous substances which are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or

claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 24, above.

28. Nothing in this Consent Order is intended as a release or covenant not to sue for any entity not a signatory to this Consent Order, and the United States expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation, or other entity not a signatory to this Consent Order. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order.

#### XI. COVENANTS BY RESPONDENT

29. In consideration of the United States' covenant not to sue in Section X, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, its agencies, officers, representatives, contractors, or employees, with respect to the Past Response Costs or the OUI RD/RA at the Site or this Consent Order including (a) any direct or indirect claim for reimbursement from the Hazardous Substance

Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), through Sections 106(b)(2), 111, or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other provision of law; and (b) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, related to the Past Response Costs or the OUI RD/RA.

## XII. CONTRIBUTION PROTECTION

30. With regard to claims for contribution against Respondent, the Parties hereto agree that Respondent is entitled to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for matters addressed in this Consent Order. The matters addressed in this Consent Order, for purposes of the preceding sentence, are any and all civil liability pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of Past Response Costs or the costs of the OUI RD/RA, and any and all civil liability for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, in connection with the OUI RD/RA. Such contribution protection with respect to Respondent is conditional upon Respondent's compliance with the requirements of this Consent Order.

## XIII. CLAIMS AGAINST THE FUND

31. Nothing in this Consent Order shall be deemed to constitute preauthorization of a CERCLA claim within the meaning

of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612, or 40 C.F.R. § 300.700(d).

#### XIV. OPPORTUNITY FOR PUBLIC COMMENT

32. This de minimis Consent Order shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). The United States may withdraw its consent to this Consent Order if comments received disclose facts or considerations that indicate that this Consent Order is inappropriate, improper, or inadequate.

#### XV. ATTORNEY GENERAL APPROVAL

33. This Consent Order shall be deemed to be issued upon the approval of the settlement embodied in this Consent Order by the Attorney General or her designee, pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

#### XVI. EFFECTIVE DATE


34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 32, above, has closed and that comments received, if any, do not require EPA to modify or withdraw from this Consent Order.

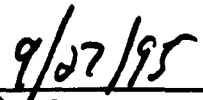


IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

  
\_\_\_\_\_  
Jeanne Fox  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

  
\_\_\_\_\_  
Date

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. The Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of the Respondent certifies under penalty of perjury under the laws of the United States and of the State of the Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind the Respondent thereto.

Reynolds Metals Company  
NAME OF RESPONDENT

9-26-95  
Date

RH Donaldson  
(signature)

Roger H. Donaldson  
(typed name of signatory)

Director of Technology  
(title of signatory)

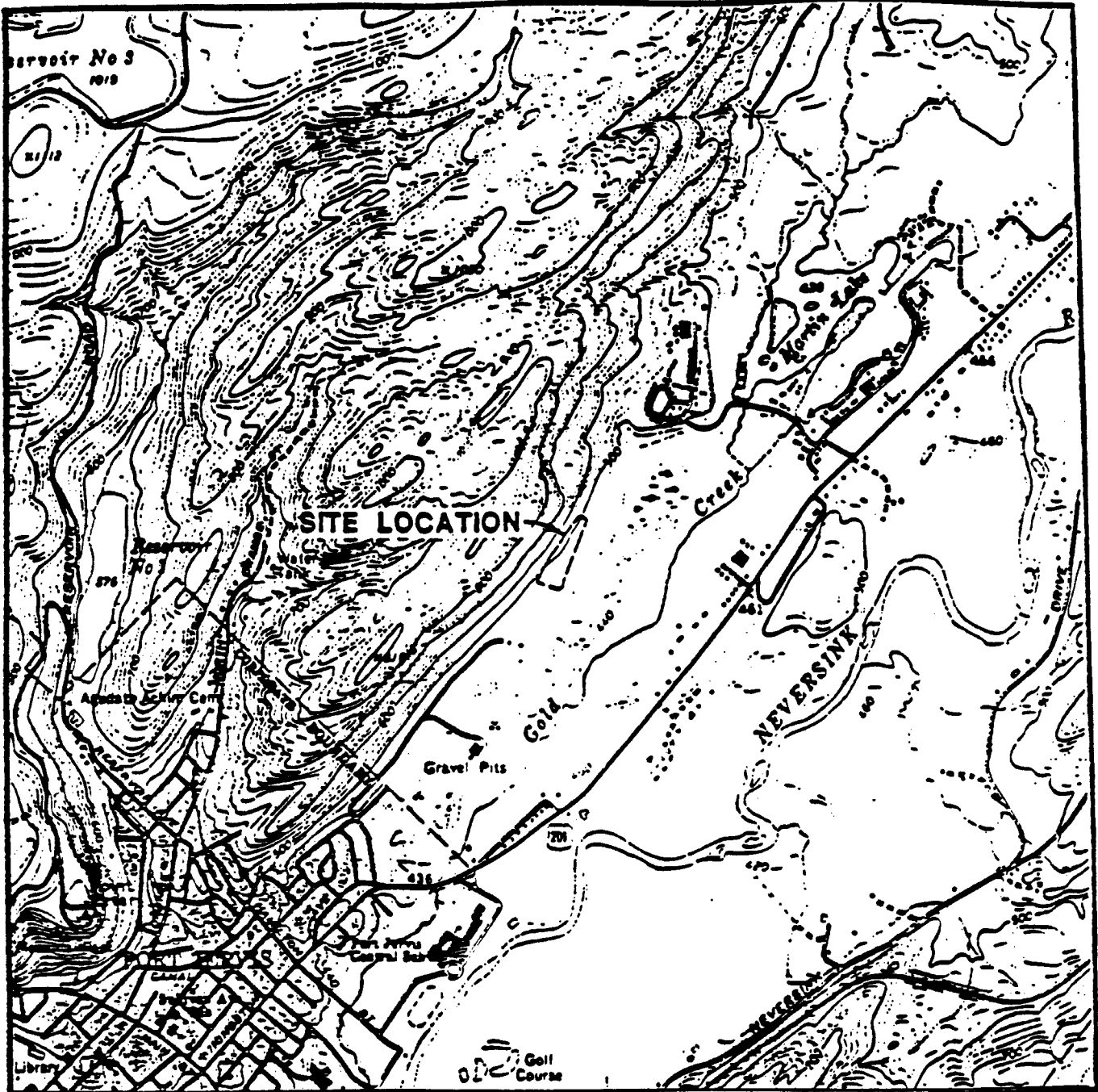
CONTRACT APPROVALS PER COM C-48.6  
2-2025 (Rev. 7-89)

REQUIRED APPROVAL	INITIALS	DATE
LEGAL	<u>/s/</u>	<u>9/26/95</u>

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**APPENDIX 1**

**700130**



CARROLL AND DUBIES SITE  
PORT JERVIS, NEW YORK

# SITE LOCATION MAP

700131



SOURCE: USGS 7 1/2 MIN. TOPOGRAPHIC QUAD.  
PORT JERVIS NORTH, NY-PA 1969

BLASLAND & BUCK ENGINEERS P.C.  
ENGINEERS & GEODENSITISTS